**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR**

**S.A. No. 447 OF 2007**

Suresh Ramrao Wankhade & anr.
v.
Laxminarayan Baijnath Yadao .

| Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr.A.S.Kilor Advocate for the appellants.

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**CORAM: A.B. CHAUDHARI, J.**
**DATED : 1st NOVEMBER, 2007.**

Heard Mr.Kilor, learned counsel for the appellant. Assailing the impugned judgment and decree concurrently made by the courts below, the learned counsel for appellants argued that the courts below ought not to have exercised the discretion in granting specific performance of contract in favour of the plaintiff in the facts of the present case. He argued that time being essence of contract in question, the suit could not have been decreed as the plaintiff himself breached the contract.

2. Having heard him and having gone through the impugned judgment and decree made by the

courts below, there is a concurrent finding of fact recorded by the courts below in respect of immovable property in question, namely the suit plot. Time was not essence of contract. The courts below concurrently found that the plaintiff was ready and willing to perform his part of contract and, in fact, had paid amount of Rs.1,16,632=50. In view of this, the courts below directed the plaintiff to deposit the balance amount of Rs.50,000/- on or before 31.10.2003 and ordered defendants to execute the sale-deed. The discretion exercised by the courts below in making the decree for specific performance is sound judicial discretion and I do not find any reason muchless special reason to interfere with the concurrent findings of fact recorded by the courts below. The appeal has no merit and the same is dismissed.

JUDGE

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